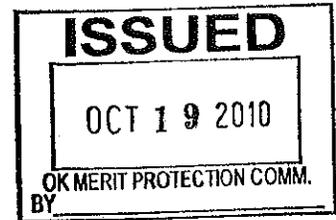


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

PAM EISENHOUR,)
)
 Appellant,)
)
 vs.)
)
 OKLAHOMA CORPORATION)
 COMMISSION,)
)
 Appellee.)

Case No. MPC-10-308



FINAL ORDER

This matter came on for hearing before Jami J. Fenner, Administrative Law Judge, on September 29 and October 6, 2010, at the Oklahoma Merit Protection Commission's office in Oklahoma City, Oklahoma. Appellant Pam Eisenhour appeared in person and through her counsel, Daniel J. Gamino. Appellee Oklahoma Corporation Commission ("OCC") appeared through its counsel, David W. Lee, and through the party-representative, Christine Jolly.

Appellant is a permanent, classified employee of Appellee, appealing from an adverse disciplinary action of a three-day suspension without pay. The undersigned heard the sworn testimony of witnesses, viewed the exhibits admitted into evidence, and heard argument from counsel. After receiving all evidence and closing arguments, the undersigned closed the record on October 6, 2010.

ISSUES

The issues to be decided, as agreed by the parties at the Pre-hearing Conference, are as follows: "1) Whether Appellant engaged in the alleged conduct; 2) Did the alleged conduct constitute misconduct and/or insubordination? 3) Whether just cause existed for the discipline."

Upon consideration of the record, the undersigned Administrative Law Judge issues the

following findings of fact and conclusions of law pursuant to 74 O.S. § 840-6.7(B).

FINDINGS OF FACT

Ms. Eisenhour testified she began her employment with OCC in February 2005. At the time of the adverse action, Ms. Eisenhour held the position of IS Network Management Specialist.

On May 7, 2010, Dennis Eppley, Deputy Director of IT for OCC issued a memorandum (Appellee's Exhibit 5) regarding "NOTICE OF POSSIBLE ADVERSE ACTION – SUSPENSION WITHOUT PAY." The Notice informed Ms. Eisenhour of Mr. Eppley's intent to administer a three-day suspension without pay to Ms. Eisenhour. The Notice identified the cause of the action as insubordination and misconduct. More specifically, according to the Notice, Jan Mauldin, Ms. Eisenhour's direct supervisor, went to Ms. Eisenhour's cubicle on April 19, 2010, and, after a "few minutes," discovered "a stapler resting on the space bar of the production machine keyboard." Because Mr. Eppley previously had instructed Ms. Eisenhour (and her supervisor) not to do so in the past and had reprimanded Ms. Eisenhour for doing so, Mr. Eppley considered the behavior insubordination and misconduct.

Ms. Eisenhour, through her attorney, sent a written response to the proposed suspension on May 19, 2010. (Appellee's Exhibit 6). Included in the response was a memorandum from Ms. Eisenhour in which she denied having placed a stapler on the space bar and stated Ms. Mauldin's report was false. On June 7, 2010, Mr. Eppley issued a final Notice of Adverse Action, suspending Ms. Eisenhour for three days without pay.

The evidence did not show Ms. Eisenhour engaged in the alleged conduct. Ms. Eisenhour denies she placed the stapler on the keyboard, and testified she had not done so since receiving a written reprimand on August 21, 2007, for similar behavior.

Ms. Mauldin testified she did not see Ms. Eisenhour place the stapler on the keyboard. Ms. Mauldin's testimony about how she and when she discovered the stapler was not credible. Moreover, Ms. Mauldin did not recommend a suspension without pay, or discipline of any kind, when she went to Mr. Eppley with the information on either April 22 or 23, 2010. She further testified it was Mr. Eppley's idea to transfer Ms. Eisenhour; yet, in her email to Mr. Eppley, Ms. Mauldin stated, "I would respectfully request Pam be reassigned." (Appellee's Exhibit 3). Additionally, Ms. Mauldin testified she did not remember Ms. Eisenhour denying that she had put the stapler on the keyboard. Ms. Mauldin later testified Ms. Eisenhour said she did not do it, so Ms. Mauldin asked how it got there. Considering all the evidence and the credibility of the witnesses, OCC failed to show by a preponderance of the evidence that Ms. Eisenhour engaged in the alleged action or that just cause existed for the discipline.

Based on the record, OCC did not meet its burden of proof that just cause existed for the adverse action. More specifically, OCC did not show by a preponderance of the evidence that Ms. Eisenhour engaged in the action for which OCC disciplined her.

CONCLUSIONS OF LAW

1. Any finding of fact that is properly a conclusion of law is hereby incorporated as a conclusion of law.
2. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause.
3. An agency may impose formal discipline on an employee to correct violations of statute, rule, policy, practice or procedure regarding work performance or behavior. OAC 455:10-11-11.
4. An agency may discharge, suspend without pay for period not to exceed 60 days,

or demote a permanent, classified employee for, among other things, misconduct, insubordination, inefficiency, inability to perform the duties of the position, willful violation of the Oklahoma Personnel Act or the Merit Rules, conduct unbecoming a public employee or any other just cause. OAC 455:10-11-14.

5. The burden of proof in this matter was on Appellee to show by a preponderance of the evidence that just cause existed for the adverse action and the discipline imposed was just. 74 O.S. § 840-6.5(C); OAC 455:10-9-2.

6. Appellee has failed to meet its burden of proof that just cause existed for adverse action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Appellant's appeal shall be **SUSTAINED**.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Appellee shall pay Appellant back pay for three (3) days less all income received by Appellant during the time period of the suspension, July 7, 2010, August 11, 2010, and September 15, 2010.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Appellee shall expunge Appellant's personnel file to remove all references to the suspension without pay.

Signed this 19th day of October, 2010.



Jami J. Fenner
Administrative Law Judge
Oklahoma Merit Protection Commission
3545 N.W. 58th Street
Oklahoma City, OK 73112